MONTANA LEGISLATIVE HISTORY

Chapter 65 19 91

Bill H 242 S _____ Original bill & history ✓ C

H. Committee on State Administration			S. Committee on Local Government		
Hearing Date(s)	Feb 18	✓ C	Hearing Date(s)	Mar 12	✓ C
		C		Mar 24	✓ C
		C			C
		C			C
Date Out	Feb 18	✓ C		Mar 24	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

	SENATE		
4/16	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 780	EFFECTIVE DATE: 10/01/91	

HB 241 INTRODUCED BY WHALEN, ET AL.

DISCLOSURE OF LOSS AND EXPENSE EXPERIENCE BY PROPERTY AND CASUALTY INSURERS

1/17	INTRODUCED		
1/17	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/18	FIRST READING		
1/21	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	62	29
2/11	3RD READING PASSED	66	33
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO BUSINESS & INDUSTRY		
3/15	HEARING		
3/20	COMMITTEE REPORT—BILL NOT PASSED		
3/20	ADVERSE COMMITTEE REPORT ADOPTED	39	8
3/21	RECONSIDERED ADOPTION OF ADVERSE COMMITTEE REPORT	27	22
3/23	2ND READING CONCUR MOTION FAILED	18	29
3/23	2ND READING INDEFINITELY POSTPONED	30	18

HB 242 INTRODUCED BY THOMAS, ET AL.

ALLOWING TERMINATED EMPLOYEES TO ENTER INTO CONTRACTS WITH THE STATE

BY REQUEST OF DEPARTMENT OF ADMINISTRATION

1/17	INTRODUCED		
1/17	REFERRED TO STATE ADMINISTRATION		
1/18	FIRST READING		
1/24	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	84	7
1/30	3RD READING PASSED	88	9
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO STATE ADMINISTRATION		
2/07	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	47	0
2/11	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
2/23	SIGNED BY SPEAKER		
2/25	SIGNED BY PRESIDENT		
2/25	TRANSMITTED TO GOVERNOR		
2/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 65	EFFECTIVE DATE: 2/27/91	

HOUSE BILL NO. 242

INTRODUCED BY THOMAS, DEVLIN, DRISCOLL, R. MANNING
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE HOUSE

JANUARY 17, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
JANUARY 18, 1991	FIRST READING.
JANUARY 24, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 25, 1991	PRINTING REPORT.
JANUARY 26, 1991	ON MOTION, CONSIDERATION PASSED.
JANUARY 28, 1991	SECOND READING, DO PASS.
JANUARY 29, 1991	ENGROSSING REPORT.
JANUARY 30, 1991	THIRD READING, PASSED. AYES, 88; NOES, 9.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 31, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 7, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 9, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 11, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991	RECEIVED FROM SENATE.
FEBRUARY 21, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

House BILL NO. 242

INTRODUCED BY Thomas Lewis

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

Richard E. Manning

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW STATE EMPLOYEES INVOLUNTARILY TERMINATED FROM EMPLOYMENT TO ENTER INTO CONTRACTS WITH THE STATE IMMEDIATELY FOLLOWING THEIR TERMINATION; AMENDING SECTION 2-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"**2-2-201. Public officers, employees, and former employees** not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder or proposer based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(d) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(3) "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter."

NEW SECTION. **Section 2.** Effective date. [This act] is effective on passage and approval.

-End-

Montana Legislative Council

INTRODUCED BILL
HB 242

approved by two-thirds of the members of each house present, then the Secretary of State shall poll the Legislature when the Governor vetoes the bill. This bill tightens that language, so there is no room for confusion. The Legislature by its rules decides which vote would trigger the veto override poll. It also defines when the Secretary of State's office tallies the veto override poll. This prevents any confusion as to when the Secretary of State's office announces the total vote. The bill also corrects an inconsistency between the Constitution of the state and the statute. The Constitution specifies that the veto override triggers from two-thirds of the members present and the statute says two-thirds of the members present "of each house."

Proponents' Testimony:

Garth Jacobson, Chief Legal Counsel, Secretary of State's Office, presented written testimony. EXHIBIT 8

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. THOMAS said the legislator's signatures are on record at the Secretary of State's office. Any "fax" coming into the office could be checked for accuracy of the signature. Any legislator could find themselves in a position where they would need to use the facsimile. It would be a convenience. "We allow an absentee vote by signature in the House, which is another good rule that was changed. This would make that rule less cumbersome."

EXECUTIVE ACTION ON HB 244

Motion: REP. PHILLIPS moved HB 244 DO PASS.

Recommendation and Vote: The motion CARRIED unanimously.

HEARING ON HB 242

Presentation and Opening Statement by Sponsor:

REP. FRED THOMAS, House District 62, Stevensville, introduced HB 242 which would allow state employees involuntarily terminated from employment to enter into contracts with the state immediately following their termination. The bill amends the statute that restricts a public employee from contracting with a public agency for six months after they have terminated their employment. The law is on the books to prohibit someone that is working for the state, and possibly handling a very important and technical case, from quitting and then putting the state in a

position where the state would be almost forced to contract with them to finish the work at possibly a much higher amount than their previous salary. This bill would correct a very unfair situation. Employees whose jobs may be eliminated due to privatization of government services may be prohibited from working with the company that was hired to replace them. This creates a double jeopardy; they not only lose their job, but they cannot compete for the new private sector job. The bill preserves the original intent. The bill says, "A former employee does not include persons whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving a violation of provisions of the chapter."

Proponents' Testimony:

Mark Cress, Chief, Employee Relations Bureau, Department of Administration, said his division assists agencies with the adoption of personnel policy and advising on employment matters which include reduction in force or reorganization when employees may be laid off. Agencies have expressed their concern about the provisions of the section of the statute that involves employees in involuntary reduction in force. It is difficult to explain to an employee why after an involuntary separation they are unable to apply or compete with the job with the contractor or to compete for the contract. The section appears unfair. Six months is a fairly long period of time when you have lost employment. "In Montana, where we have public employees who have specialized skills, it may be quite difficult for them in our small labor market to find employment that does not involve public contract. The law does allow a contract for the lowest responsible bidder. . . . There are a number of contracts with the state where there is not a traditional bidding process as there may be other criteria . . . other than just cost which determine the successful award of the contract."

Mark Langdorf, Field Representative, Montana Council No. 9, American Federation of State, County and Municipal Employees, presented written testimony. **EXHIBIT 9**

Opponents' Testimony: None

Questions From Committee Members:

REP. DAVIS asked for clarification on the following: In the title it talks about involuntary termination, then down below it says "former employee may not within six months." Should six months be crossed out. **Mr. Langdorf** said the title refers to the employee that is laid off and would be able to be employed immediately. The six months will remain for the people who voluntarily quit. **REP. DAVIS** asked to be shown in Sect. 1, Lines 12 - 24 where it indicates voluntary termination. **Mr. Langdorf** said the law now states that any employee cannot contract within

six months of their termination. This bill under the definition of employee, excludes employees who are voluntarily terminated. It reads that the former employee may not within six months contract, but employee does not include those people who are laid off. **REP. THOMAS** said the bill retains the original intent of the law, but it is saying in the language that a former employee does not include "this person that was displaced." This is on Pg. 1, Ln. 19, which says "a former employee may not within six months."

Closing by Sponsor:

REP. THOMAS chose to not close.

EXECUTIVE ACTION ON HB 242

Motion: **REP. KASTEN** moved HB 242 **DO PASS.**

Discussion:

REP. DAVIS asked for explanation of "former employee" on Pg. 1, Ln. 19, versus Pg. 2, Ln. 19 "former employee." A former employee is a former employee. "It seems to me they could have reworded (the bill) so a former employee who voluntarily leaves is a former employee versus one who is involuntarily terminated. **REP. DAILY** said, "I think what they have done here is to simply define what a former employee is. A former employee is not a person who is involuntarily terminated." **Sheri Heffelfinger** said she would agree with Rep. Daily's description. "They are doing it by definition rather than changing the language on Sect. 1, Pg. 1, Ln. 19. By defining what an employee is not, it is a negative rather than a positive definition, but it does fulfill the purpose of the bill."

Recommendation and Vote: The motion **CARRIED** unanimously.

Motion: **REP. KASTEN** moved HB 242 **BE PLACED ON THE CONSENT CALENDAR.**

Discussion:

REP. CAROLYN SQUIRES said she thought the bill would need an explanation on the floor of the House.

REP. KASTEN withdrew her motion.

HOUSE STANDING COMMITTEE REPORT

January 24, 1991

Mr. Speaker: We, the committee on State Administration report that House Bill 242 (first reading copy -- white) do pass .

Signed: _____

Jan Brown, Chairman

EXH. 9
DATE 1/29/91
HB 242

HB242

Dear Madam Chairwoman, members of the committee;

For the record my name is, Mark Langdorf, I am a Field Represenative for Montana Council #9 of the American Federation Of State, County, and Municipal Employees.

Every person forced into the ranks of the unemployed should have the right to seek out employment in all sectors of the work force, which this bill addresses.

Unfortunately this bill follows suit with the Administration's ambitions to move government services into the private sector. The Governor's efforts to achieve this goal is plainly seen in this bill.

Although we support the spirit of this bill, AFSCME feels, that it has to make clear that we do not support "contracting out" or "privitization" by supporting the spirit of this bill.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. HB 242

DATE 1/24/91 SPONSOR(S) REP. THOMAS

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MARK LANGDORF	AFSCME	242		X
MARK CRESS	Dept. of Administration	242		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Eleanor Vaughn, on February 7, 1991, at 10:05 a.m.

ROLL CALL

Members Present:
Eleanor Vaughn, Chairman (D)
Bob Pipinich, Vice Chairman (D)
John Jr. Anderson (R)
Chet Blaylock (D)
James Burnett (R)
Bill Farrell (R)
Harry Fritz (D)
Bob Hockett (D)
Jack Rea (D)

Members Excused: Bernie Swift (R)

Staff Present: David Niss (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HB-242

Presentation and Opening Statement by Sponsor: Representative Fred Thomas, District 62, said this bill amends the statutes that restricts previous state employees from contracting with a public agency for 6 months after they have terminated their employment. The bill removes this restriction from public employees who are involuntarily terminated. This corrects a very unfair situation. These might be employees whose jobs have been eliminated due to privatization or a reduction enforce. They are now prohibited from working for the company that is hired to replace them. In the case of privatization, that service is no longer functioning with state employees, and under current law it has not allowed the former employee to contract back with this new company. In case of riff, for instance, we may want to

contract with an employee that has been reduced in force to do part of the job that they used to be doing. But currently there is this six month law on the books that prohibits this from happening in most cases. As you can see, this creates a double jeopardy for those people. Not only do they lose their job, but they can not compete for the new private sector job, or contract. He understands that the current law on the books was adopted to restrict employees, who voluntarily quit their public job at a critical time, from contracting back to the state to finish the project at a higher pay rate. This could fall in the category of a lawyer, engineer, architect, or someone in this type of professional service, that was working on a particularly important project and quits. Since they are the only one who can finish the job, they get contracted back at a higher rate of pay. This is unfair, and this is why this law is on the books now. This bill keeps our current intent of the law, so that someone can't hold the state hostage. It keeps the critical job employee from quitting and contracting back, but it opts out as the bill states " a former employee does not include a person whose employment in the state has been involuntarily terminated due to the reduction in force or the involuntary termination not intended as a violation of this chapter for privatization. So this creates a fair situation for an employee of the state whose involuntarily jobless v.s. someone who voluntarily quits and hopes to take the state hostage. It is clear that this law should be changed.

Proponents' Testimony: Mark Cress, Department of Administration, said he works for the State of Montana Personnel Division and in this position he adopts personnel policies and assists agencies in reorganization and reduction of work force. Several agencies have expressed concern to the department about the provision of this law, and its fairness when employees are involuntarily laid off. It is difficult for an agency to explain to an employee, who has lost their job involuntarily, why they may not be able to compete for a job that the contractor may offer or to compete for the contract themselves. Six months is a very long period of time when you are unemployed. With many of our public employees they have specialized skills that may make it very difficult to find a job, in our small labor market, that is does not involve a public contract. Now, existing law does allow them to be employed if the contract is left to the lowest responsible bidder, but as you know, there are many state contracts where there is not that kind of a competitive bidding process with a request for proposal. There may be a sole source, so there are a number of situations where these involuntarily laid off employees would be precluded from that employment. It is our concern that

this law raises the question in the eyes of an employer whether it is legal or not to hire the employee. We don't want those potential employers or contractors to be hesitant, and we feel this bill will remove any hesitation. Yet, it would maintain the original intent of the law. He urged the committee to support HB-242.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: Representative Thomas closed by stating that he felt the committee understood the concept here. A law that has good intentions, but puts people in a predicament that we ought to eliminate it from happening. This is all this bill does.

Senator Vaughn asked if Representative Thomas had someone to carry this bill to the Senate floor? Representative Thomas said that Senator Farrell said he would carry the bill.

HEARING ON HB-244

Presentation and Opening Statement by Sponsor: Representative Fred Thomas, District 62, said this bill would allow in the situation of a veto override vote, after a session is adjourned, and the veto override vote is being polled, then the members of the legislature would be able to send in their vote by facsimile. This situation has come up in past special sessions, when members did not get their mail quick enough because of address changes, etc. They would have the ability to send their vote in via fax today if this is the deadline when they receive the notice. Can they mark the ballot that was sent to them from the Secretary of State, and then send it back by fax? This is the first thing the bill does. It allows the return vote on a veto override to be sent back via facsimile. The procedure for a veto override is: #1. you receive a registered letter with your ballot and you sign for it. There is a strict procedure on who can receive this registered veto override ballot. #2 then this ballot that is signed and returned by facsimile under this bill. HB-244 also eliminates the requirement that the Secretary of State must mail out a full copy of a bill that has been vetoed, but it did not have sufficient votes to override the veto. It is just an information deal. HB-244 would allow the Secretary of State to save postage and printing by not mailing out the full copy of the

bill, but a cover sheet with the title, etc. There is a cost savings also in this bill. Finally, the bill corrects an inconsistency between the Constitution of the state of Montana and the statute. The state Constitution specifies that the veto override triggers by a 2/3 of the members present. The statute say the veto override triggers by 2/3 of the members present in each house. This is a conflict because the statute is not conforming with the Constitution. This bill changes and corrects this. Representative Thomas said he could give examples of the need for facsimile override, etc., but he left his opening at that.

Proponents' Testimony: Garth Jacobson, representing the Secretary of State's Office, said that HB-244 as explained by the sponsor, Representative Thomas, is a bill which is an ounce of prevention to cure of pound of problems. (Exhibit #1).

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: Representative Thomas said that the only thing that needed to be done, is that an amendment to our joint rules as to which vote will trigger the veto override, and which is counted against. This would be an amendment, so if it passes the Senate then it would go back to the House, but just to vote on the amendment. The question is it an amendment vote or is it second reading, that rule needs to be clarified. This will be done by some committee on rules.

HEARING ON HB-225

Presentation and Opening Statement by Sponsor: Representative John Phillips, District 33, said his bill was a little different type of facsimile bill. This bill merely permits election administrators, the Secretary of State in conjunction with his advisory committee, to set up procedures to vote by casting ballots via facsimile. We all know that we are living in a machine age, a fax world. This probably came about more from the idea of those folks serving in Desert Shield. We are not telling anyone that they have to do this, but if they don't have facsimile equipment they don't have to buy any. But this bill permits and lays the ground work for the Secretary of State to start setting up procedures for when this is wide spread. The Federal Government is pushing Secretaries of States pretty hard

ahead of time. Senator Fritz wasn't sure. The committee thought the list should be mailed before the Legislature convenes. Senator Vaughn said Mr. Niss' question is whether the Legislative Council mails the list, and then the reports requested, like they send the audit reports? Senator Fritz said he would like the amendment to apply only to those reports not circled, and the list would be mailed before the Legislature convenes, and requested reports would be mailed from the Legislative Council.

Senator Hockett thought it should be checked to see who will pay the postage. The Legislative Council may not want to pay it all, and it comes out of the agency budgets now. He asked David Niss to research this. Senator Farrell said possibly the requested reports could be distributed when the Legislature convenes. The reports that we need to read are already circled. The committee agreed. Senator Vaughn said the motion to direct Mr. Niss to draft an amendment to have a list mailed to the Legislature, then the reports requested will be delivered when the Legislature convenes. The to draft these amendments passed.

EXECUTIVE ACTION ON HB-242

Senator Vaughn asked for a motion on HB-242 that would allow an involuntarily dismissed state employee to contract back with the state without waiting 6 months.

Motion: Senator Farrell moved to Concur on HB-242. The motion passed unanimously, and was recorded as a roll call vote. Senator Farrell will carry this bill.

EXECUTIVE ACTION ON HB-244

Senator Vaughn asked for a motion on HB-244 that would clarify the procedure for polling the Legislature following the veto of a bill when the Legislature is not in session.

Motion: Senator Burnett moved to Concur in HB-244. The vote was unanimous and recorded as a roll call vote. Senator Vaughn will check with Representative Thomas as to whom he wants to carry the bill. Senator Brown will probably do so.

Discussion of Nominations Process:
Senator Fritz said that a Senator has requested that one of the appointees on one of the boards assigned to him, be segregated and a hearing be held. Senator Vaughn said that a public hearing is held after this resolution is heard. Anyone has the right to come to the public hearing, and we will work on confirming the